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DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
PONDEROSA VALLEY

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- Exhibit "B" - Property Subject to Annexation
- Exhibit "C" - Bylaws of Ponderosa Valley Homeowners  
    Association, Inc.

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**PONDEROSA VALLEY**

STATE OF TEXAS           §  
                                   §     KNOW ALL MEN BY THESE PRESENTS:  
 COUNTY OF DENTON       §

This **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PONDEROSA VALLEY** ("Declaration") is made on the date hereinafter set forth by Aristocrat Fund XXIV, L.P., a Texas limited partnership (hereinafter sometimes called "Declarant").

Declarant is the owner of the real property described on Exhibit "A" attached to this Declaration and incorporated by reference. This Declaration imposes on such property mutually beneficial restrictions under a general plan of improvement for the benefit of the present and future owners of each portion of such real property, and establishes flexible and reasonable procedures for the overall development, administration, maintenance and preservation of such property.

Declarant hereby declares that the real property described in Exhibit "A", including the improvements constructed or to be constructed thereon, and any additional property which is hereafter annexed in accordance with Article XII hereof, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the following covenants, conditions, restrictions, easements, assessments and liens, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, such real property. This Declaration shall be binding on and shall inure to the benefit of all persons having any right, title or interest in all or any portion of such real property, their respective heirs, legal representatives, successors, successors-in-title and assigns.

**ARTICLE I**  
**DEFINITIONS**

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "Association" - Ponderosa Valley Homeowners Association, Inc., a Texas non-profit corporation, its successors and/or assigns.

1.2 "Board of Directors" or "Board" - The body responsible for administration of the Association, selected as provided in the Bylaws and generally serving the same role as the board of directors under Texas corporate law.

1.3 "Builder" - Any Person which purchases one or more Lots within the Community for the purpose of constructing improvements thereon for later sale to consumers or purchasers of parcels of land within the Community for further subdivision, development and/or resale in the ordinary course of such Person's business and may include the Declarant.

1.4 "Bylaws" - The Bylaws of Ponderosa Valley Homeowners Association, Inc. attached to this Declaration as Exhibit "C" and incorporated by this reference, as they may be amended from time to time.

1.5 "Class 'B' Control Period" - The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors, as provided in Article III, Section A.2 of the Bylaws.

1.6 "Common Property" - Any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, if any, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.7 "Community" - That certain real property described in Exhibit "A" to this Declaration, together with any additional property which is hereafter made subject to this Declaration in accordance with Article XII hereof.

1.8 "Community-Wide Standard" - The standard of conduct, maintenance, or other activity generally prevailing throughout the Community. Such standard may be more specifically determined by the Board and the Architectural Review Committee.

1.9 "County" - The County of Denton, Texas.

1.10 "Declarant" - Aristocrat Fund XXIV, L.P., a Texas limited partnership and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire such interest for the purpose of development or sale of all or any portion of the remaining undeveloped or unsold portions of the Community and is designated as the "Declarant" hereunder in a recorded instrument executed by the immediately-preceding "Declarant". Upon designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that there shall be only one "Declarant" hereunder at any given time.

1.11 "Eligible Mortgage Holder" - Those holders of First Mortgages secured by Lots in the Community who have requested notice of certain items as set forth in this Declaration.

1.12 "First Mortgage" - Any Mortgage which is not subject to any lien or encumbrance except the taxes or other liens which are given priority by statute or agreement.

1.13 "First Mortgagee" - The beneficiary or holder of a First Mortgage.



1.14 "Lot" - Any plot of land within the Community, other than the Common Property, whether or not improvements are constructed thereon, which constitutes a single-family dwelling site as shown on a plat recorded in the land records of the County. Where the context indicates or requires, the term Lot includes any structure on the Lot.

1.15 "Member" - A person entitled to membership in the Association, as provided in Section 2.2.

1.16 "Mortgage" - Any mortgage, security deed, deed of trust and any and all other similar instruments used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation.

1.17 "Mortgagee" or "Mortgage Holder" - The holder of a Mortgage.

1.18 "Mortgagor" - Any Person who gives a Mortgage.

1.19 "Occupant" - Any Person occupying all or any portion of a Lot for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

1.20 "Owner" - The record owner(s) of the fee simple title to or an undivided fee interest in any Lot, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

1.21 "Person" - Any natural person, as well as a corporation, joint venture, partnership (general or limited), association, or other legal entity.

1.22 "Residence" - A residential dwelling structure constructed on a Lot and which is intended to be used and occupied as a residence for a single family.

## **ARTICLE II**

### **ASSOCIATION FUNCTION, MEMBERSHIP AND VOTING RIGHTS**

2.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Common Property. The Association shall be responsible for enforcement of this Declaration and such reasonable rules regulating use of the Lots and Common Property as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines (as defined in Section 7.3 hereof). The Association shall perform its functions in accordance with this Declaration, the Bylaws, the Articles and Texas law.

2.2 Membership. Each Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the

privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 2.3 hereof and in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners hereunder. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Members' spouse. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

2.3 Voting. The Association shall have two classes of membership, Class "A" and Class "B".

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any.

Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 2.2 of this Article; there shall be only one vote per Lot. In any situation where a Member is entitled personally to exercise the vote for his Lot and there is more than one Owner of a particular Lot, the vote for such Lot shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The Class "B" Member is entitled to three (3) votes for each Lot in which it holds the interest required for membership under Section 2.2 of this Article. Additional rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration and the Bylaws, are specified elsewhere in the Declaration and the Bylaws. The Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period as specified in Article III, Section A.2 of the Bylaws.

The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of (i) two (2) years after expiration of the Class "B" Control Period pursuant to Article III of the Bylaws; or (ii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

2.4 Irrevocable Proxy. Each Member, by acceptance of a deed to any Lot, constitutes and appoints the Declarant as its duly authorized attorney-in-fact, with full power of substitution, to provide any necessary approval of the exercise of all rights and powers of the Declarant set forth in this Declaration and in the Bylaws, including the right to select the members of the Board of Directors until the first to occur of the events specified in Article III, Section 6 of the Bylaws. This proxy is coupled with an interest and is irrevocable.

**ARTICLE III**  
**RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

3.1. Common Property. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Property and all improvements thereon (including, without limitation, furnishings, equipment and common landscaped areas), and shall keep it in good, clean, attractive and sanitary order and repair, consistent with this Declaration and the Community-Wide Standard.

3.2. Personal Property and Real Property for Common Use. The Association may acquire, hold and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association improved or unimproved real estate located within the Community, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as Common Property by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed. Declarant shall not be required to make any improvements whatsoever to the property to be conveyed and accepted pursuant to this Section.

3.3. Rules. The Association, through its Board, may make and enforce reasonable rules governing the use of the Lots and Common Property. Such rules shall be binding upon all Owners, occupants, invitees and licensees until and unless repealed or modified in a regular or special meeting by two-thirds (2/3) of the Class "A" votes in the Association and by the Class "B" Member, so long as such membership exists.

3.4. Enforcement. The Association, through its Board, may impose sanctions for violations of this Declaration, the Bylaws or rules in accordance with procedures adopted by the Board, including reasonable monetary fines and suspensions of the right to vote and to use recreational facilities, if any, within the Common Property. In addition, the Association may exercise self-help to cure violations (including, without limitation, the towing of vehicles and the removal of personal property), and may suspend any services it provides to the Lot of any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall also be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board on behalf of the Association, or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

3.5. Occupants Bound. Each Owner shall cause all Occupants of his or her Lot to comply with the Declaration, Bylaws and the rules and regulations of the Association, and shall be responsible for all violations and all losses or damages resulting from violations by such Occupants, notwithstanding the fact that such Occupants of the Lot are fully liable and may be personally sanctioned for any violation.

In the event that an Occupant violates the Declaration, Bylaws or a rule or regulation for which a fine is imposed, such fine shall be assessed against the Occupant; provided, however, if the fine is not paid by the Occupant within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association of the Occupant's failure to do so. Unpaid fines shall constitute a lien against the Lot.

Any violation of the Declaration, Bylaws or rules and regulations by a lessee or any person living with the lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Texas law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws and the rules and regulations of the Association, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner.

In the event the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be assessed as a specific assessment against the Lot and the Owner.

3.6 Implied Rights; Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws or by law, all rights and powers of the Association may be exercised by the Board without a vote of the Membership.

3.7 Indemnification. The Association shall indemnify every officer, director and committee member against all expenses, including legal fees, reasonably incurred in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the current Board) to which he or she may be a party by reason of being or having been an officer, director or committee member.

The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director or committee member may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

3.8 Dedication of Common Property. The Association may dedicate portions of the Common Property to the County or to any other local, state or federal governmental entity, subject to such approval as may be required by such entity and by Section 11.2 of this Declaration.

3.9 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to make the Community safer than it otherwise might be. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE COMMUNITY, NOR SHALL THE ASSOCIATION BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES AND DECLARANT, AND ANY SUCCESSOR DECLARANT, ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTY WITHIN THE COMMUNITY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF RESIDENCES ON LOTS RESULTING FROM ACTS OF THIRD PARTIES.

#### ARTICLE IV MAINTENANCE

4.1 Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property including, without limitation, any recreational facilities situated thereon. The Association shall also maintain, repair and replace, if necessary: (a) all entry features and monuments for the Community including the expenses for water and electricity, if any, provided to all such entry features, and (b) all landscaping (including sprinkler systems) located on the Common Property or public right-of-way within the Community.

In addition, the Association shall have the right, but not the obligation, to maintain property not owned by the Association, whether within or outside the Community including, without limitation, publicly-owned property and property dedicated to public use, where the Board has determined that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

In the event that the Association determines that the need for maintenance, repair or

replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, or the family, guests, lessees or invitees of an Owner, and is not covered or paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the lot of such Owner pursuant to Section 6.6 hereof.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

4.2 Owner's Responsibility. Except as provided in Section 4.1 of this Article, all maintenance of the Lot and all structures, parking areas, landscaping and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. Additionally, a Builder shall maintain any Lot for which it has contracted to purchase from the Declarant in a manner consistent with the Community-Wide Standard and this Declaration, which maintenance shall include the regular mowing, weeding, irrigating, fertilizing, pruning and trimming of such Lot.

In addition to its other enforcement rights, in the event that the Board determines that any Owner or Builder has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Board may cause such maintenance to be performed at the Owner's sole cost and expense, subject to the following procedures. Except in an emergency situation, the Board shall give the Owner prior written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement or, in the event that such maintenance, repair or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If the Owner fails to do so, the Association may provide any such maintenance, repair or replacement without further notice, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot pursuant to Section 6.6 of this Declaration.

#### 4.3 Party Walls and Similar Structures.

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Lots which serves and/or separates any two adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Arbitration. In the event of any dispute arising concerning a party structure, each party shall appoint one arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request by the Board, the Board shall appoint an arbitrator for the refusing party. The arbitrators appointed shall appoint one additional arbitrator. The decision by a majority of all three arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

## ARTICLE V INSURANCE AND CASUALTY LOSSES

5.1 Association Insurance. The Association shall have the authority to and shall obtain or cause to be obtained insurance for all insurable improvements which the Association is obligated to maintain, whether or not located on the Common Property. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

The Association also shall obtain a public liability policy applicable to the Common Property covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members, employees, agents or contractors while acting on behalf of the Association and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least \$1,000,000.00.

The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required thereunder through the Declarant and to reimburse Declarant for the cost thereof, and Declarant shall be authorized, but not obligated, to purchase such insurance coverage

for the benefit of the Association and the Owners upon Declarant and the Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost. In the event of an insured loss, the deductible shall be treated as a common expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board determines, in its sole discretion, that the loss is the result of the negligence of willful conduct of one or more Owners or occupants, then the Board may specifically assess the full amount of such deductible against the Lot of such Owner or occupant, pursuant to Section 6.6 hereof.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association and shall be governed by the following provisions:

(a) All policies shall be written with a company authorized to do business in Texas with a Best's rating of A or better.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All property insurance policies shall have an inflation guard endorsement and an agreed amount endorsement, if reasonably available, and shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the County.

(e) The Board shall make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Board of Directors, the manager, the Owners and Occupants and their respective tenants, servants, agents and guests;



(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) that no policy may be canceled, subjected to non-renewal, invalidated or suspended on account of any curable defect or the conduct of any Owner or Occupant, or any director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(iv) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(v) that no policy may be canceled, subject to non-renewal or substantially modified without at least thirty (30) days' prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonably available. The amount of fidelity coverage shall be determined in the directors' best business judgment and, if reasonably available, shall at least equal three months' assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, subjected to non-renewal or substantially modified without at least thirty (30) days' prior written notice to the Association.

The Association shall also obtain construction code endorsements, steam and boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U. S. Department of Veterans Affairs or the U. S. Department of Housing and Urban Development. It is the intent of this Section that the Association maintain insurance in effect meeting the requirements of the above-named entities as applicable, and as said requirements may change from time to time.

**5.2 Individual Insurance.** By virtue of taking title to a Lot, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of any Lot, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry property insurance on his Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on the Lot in an amount not less than \$100,000 per occurrence. Each Owner shall furnish a copy of such insurance policy or policies to the Association within ten (10) days of the Association's request for same. The property insurance shall cover loss or damage

by fire and other hazards commonly insured under an "all-risk" policy, if reasonably available, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall remain in effect at all times. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner. The Association shall have the right, but not the obligation, at the expense of the Owner, to acquire the insurance required to be maintained by the Owner if the Owner fails to provide a valid policy to the Association with a prepaid receipt within thirty (30) days after receipt by the Owner of a written request from the Association. If the Association does acquire insurance on behalf of any Owner, the cost thereof shall be assessed against the Owner and the Lot as a specific assessment pursuant to Section 6.6 hereof.

### 5.3 Damage and Destruction -- Insured by Association.

(a) General. Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Repair and Reconstruction. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, Class "A" Members representing at least sixty-seven percent (67%) of the total Class "A" votes in the Association, and the Class "B" Member, if any, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within thirty (30) days following commencement of said sixty (60) day period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to cover the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against each Lot and the Owner thereof for the deficiency. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

5.4 Damage and Destruction -- Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction.

## ARTICLE VI ASSESSMENTS

6.1 Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of Lots, including the maintenance and insurance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

6.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot, including the Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments; and (c) specific assessments, as applicable, including, but not limited to, reasonable fines imposed in accordance with the terms of this Declaration and the Bylaws. Such assessments shall be established and collected as hereinafter provided.

All such assessments, together with late charges, interest (not to exceed the lesser of the maximum rate permitted by law or ten percent (10%) per annum on the principal amount due), and costs of collection (including, without limitation, reasonable attorney's fees), shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made until paid, as more particularly provided in Section 6.8 hereof. Each such assessment, together with late charges, interest and costs of collection, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due. Upon transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges against the Lot due at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any First Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure.

No Owner may exempt himself from liability for assessments, by non-use of Common Property, abandonment of his Lot, or for any other reason. The obligation to pay assessments is a

separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials or a combination thereof with the Declarant or other entities for payment of all or a portion of assessments due therefrom.

6.3 Estoppel Certificates. The Association shall, within ten (10) days after receiving a written request therefor and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

6.4 Computation of Annual Assessments. The initial annual assessment for each Lot for the first, partial fiscal year shall be One Hundred Eighty and No/100 Dollars (\$180.00) per Lot, prorated according to the number of months remaining in the fiscal year at the time the obligations or assessments commence. Thereafter, it shall be the duty of the Board annually to prepare a budget covering the estimated costs of operating the Association during the coming fiscal year which shall include a contribution to a capital reserve for repair and replacement of capital items, if any, in accordance with a capital budget separately prepared. The annual assessment to be levied against each Lot shall be set at a level which is reasonably expected to produce total income to the Association at least equal to the total budgeted expenses, including reserves. The Board shall cause a copy of the budget and notice of the annual assessment to be levied against each Lot for the following year to be delivered to each Owner at least thirty (30) days prior to the end of the current fiscal year.

The budget and the assessment shall automatically be effective upon adoption by the Board unless disapproved at a meeting by Members representing at least seventy-five percent (75%) of the total Class "A" Members, and the Class "B" Member, if any. There shall be no obligation to call a meeting for the purpose of considering the budget except upon petition of the Members as provided for special meetings in Article II of the Bylaws, which petition must be presented to the Board within ten (10) days after delivery of the budget and notice of the assessment. In the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the immediately preceding year shall continue in effect for the current year.

Annual assessments shall be levied equally on all Lots and shall be paid in such manner and on such dates as may be fixed by the Board of Directors. If the Board so provides by resolution,

the annual assessment may be paid in two or more installments. If any Owner is delinquent in paying any assessment or installment thereof, the Board may, upon ten (10) days' prior written notice, accelerate the annual assessment and require all unpaid installments to be paid in full immediately. Unless otherwise provided by the Board, the assessment shall be due and payable in full on the first day of each fiscal year.

So long as the Declarant has the right to unilaterally annex additional property pursuant to Article XII hereof, the Declarant may elect on an annual basis, but shall not be obligated, to reduce the resulting annual assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under this Article), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the budget and its characterization shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless provided for in a separate written agreement between Declarant and the Association.

6.5 Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments from time to time to cover unanticipated or unbudgeted expenses. Except as otherwise provided in Section 5.3(b) hereof, any special assessment shall require approval by the affirmative vote or written consent, or any combination thereof, of Members representing at least fifty-one percent (51%) of the total Class "A" Members, and the Class "B" Member, if any. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

6.6 Specific Assessments. The Board shall have the power to levy specific assessments against a particular Lot or Lots constituting less than all Lots within the Community as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items or services to any Lot or the Occupants thereof upon request of the Owner or Occupants, which benefits, items or services the Board may (but shall not be obligated to) offer from time to time; such assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred;

(b) to cover costs incurred in bringing the Lot into compliance with the terms of this Declaration, the Bylaws or rules of the Association, or costs incurred as a consequence of the conduct of the Owner or Occupants of the Lot, their licensees, invitees or guests;

(c) for fines levied pursuant to this Declaration and the Bylaws; and

(d) for any other costs or expenses specifically authorized by this Declaration to be levied against a particular Lot or Lots.

Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section.

6.7 Date of Commencement of Assessments. The assessments provided for herein shall commence as to each Lot on the first day of the month following the month in which the Lot is made subject to this Declaration. The first annual assessment due on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time the obligations or assessments commence.

6.8 Lien for Assessments. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest and costs of collection as set forth in Section 6.2 hereof, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes, or (b) liens for all sums unpaid on a First Mortgage duly recorded in the land records of the County (and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument).

All other Persons acquiring liens or encumbrances on any Lot after the recording of the original Declaration shall be deemed to consent that such liens or encumbrances are inferior to the lien provided herein to secure the payment of future assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Lot the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability or priority of the lien. The lien may be foreclosed through judicial or nonjudicial foreclosure proceedings in accordance with Tex. Prop. Code Ann. Section 51.002 et seq. (Vernon 1984), as it may be amended (the "Foreclosure Statute"), in like manner for any deed of trust on real property. In connection with the lien created herein, each Owner of a Lot hereby grants to the Association, whether or not it is so expressed in the deed or other conveyance to such Owner, a power of sale to be exercised in accordance with the Foreclosure Statute.

The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage or convey the same. The Association may sue for unpaid assessments and other charges without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the First Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the First Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be common expenses collectible from Owners of all Lots subject to assessment under this Declaration, including such acquirer, its successors and assigns.

6.9 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. Any assessment or installment thereof delinquent for a period of more than fifteen (15) days shall incur a late charge in such amount as the Board may from time to time determine. In the event that the assessment remains unpaid after sixty (60) days, the Association may commence nonjudicial foreclosure proceedings and/or institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, or to enforce the lien by suit, judgment and judicial or nonjudicial foreclosure in the same manner as other liens for the improvement of real property.

All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

6.10 Budget Deficits During Declarant Control. During the Class "B" Control Period, notwithstanding the commencement date for assessments set forth in Section 6.7 of this Article, the Declarant may also annually elect either to pay annual assessments on its unsold Lots or to pay the Association the difference between the amount of assessments collected on all other Lots subject to assessment and the amount of actual expenditures required to operate the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Regardless of such election, the Association shall have a lien against all Lots owned by the Declarant to secure the Declarant's obligations under this Section 6.10, which lien shall have the same attributes and shall be enforceable in the same manner as the Association's lien against other Lots under this Article. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in-kind" contributions of services or materials, or any combination thereof.

6.11 Failure to Assess. Failure of the Board to fix the annual assessment amount or rate or to deliver or mail each Owner a notice of annual assessment notice shall not be deemed a waiver, modification or a release of any Owner from the obligation to pay such assessments. In such event, each Owner shall continue to pay annual assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may,